

subdivision e.' These special exceptions exclude any other."

By the Act of June 25, 1910 (36 Stat. 840) § 23b was further amended so as to include in the exception suits for the recovery of property under section 70, subdivision e. See *Weidhorn v. Levy*, 253 U. S. 268, 272.

We think that the exceptions thus established by the amending acts show clearly that it was the intent of the Congress that § 23b should operate as a grant of jurisdiction to the federal court of suits brought by a trustee in bankruptcy against adverse claimants, provided the defendant consented to be sued in that court, although the bankrupt could not have brought suit there if proceedings in bankruptcy had not been instituted, and that, in suits falling within the exceptions, the federal court should have jurisdiction without the defendant's consent. The question was not necessarily involved in the case of *Lovell v. Newman & Son*, 227 U. S. 412, 426, and so far as the language of the opinion indicated a contrary view, it is not approved. Compare *MacDonald v. Plymouth Trust Co.*, 286 U. S. 263, 268; *Page v. Arkansas Gas Corp.*, 286 U. S. 269, 271, 272.

We conclude that the court had jurisdiction in the instant case, and the decree of the Circuit Court of Appeals setting aside the order of the District Court and directing that court to hear and determine the controversy upon its merits is affirmed.

*Decree affirmed.*

GEORGE v. VICTOR TALKING MACHINE CO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
THIRD CIRCUIT.

No. 128. Argued December 5, 1934.—Decided December 17, 1934.

1. A decree of the District Court finding infringement of the common law right of property in a song, granting an injunction, and

Per Curiam.

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appointing a master to take and state an account of profits and report to the court, with the usual provisions for exceptions to such report, is interlocutory. P. 378.

2. An appeal from such a decree, taken after the time limited by Jud. Code § 129, 28 U. S. C. § 227, has expired, is beyond the jurisdiction of the Circuit Court of Appeals. P. 379.

69 F. (2d) 871, reversed.

CERTIORARI\* to review a decree reversing, on the merits, a decree of injunction and for an accounting of profits, in a suit based on an infringement of the plaintiff's common law right of property in the words of a song.

*Mr. Minitree Jones Fulton*, with whom *Messrs. Robert L. Nase* and *Q. C. Davis, Jr.*, were on the brief, for petitioner.

*Mr. Louis Levinson*, with whom *Messrs. Robert P. Myers, Lawrence B. Morris, I. E. Lambert*, and *Isaac D. Levy* were on the brief, for respondent.

PER CURIAM.

Review was limited to the question of the jurisdiction of the Circuit Court of Appeals. The suit was brought for the infringement of the common law right of property in a song, and the bill sought an accounting of profits made by the defendant. The District Court sustained the plaintiff's right as author and found infringement. Decree was entered granting an injunction and appointing a special master to take and state an account of profits and to report to the court, with the usual provisions for exceptions to the report. The decree was interlocutory. *The Palmyra*, 10 Wheat. 502; *Perkins v. Fourniquet*, 6 How. 206, 208, 209; *Craighead v. Wilson*, 18 How. 199, 202 (explaining *Forgay v. Conrad*, 6 How. 201); *Beebe v. Russell*, 19 How. 283, 287; *Humiston v. Stainthorp*, 2

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\* See Table of Cases Reported in this volume.

Wall. 106; *Keystone Manganese Co. v. Martin*, 132 U. S. 91, 93, 97; *McGourkey v. Toledo & Ohio Central Ry. Co.*, 146 U. S. 536, 547; *Guarantee Co. v. Mechanics' Savings Bank & Trust Co.*, 173 U. S. 582, 586; *Simmons Co. v. Grier Brothers Co.*, 258 U. S. 82, 89. The decree was entered on March 31, 1933, and the appeal to the Circuit Court of Appeals was not taken until May 18, 1933. The Circuit Court of Appeals entertained the appeal and reversed the decree of the District Court. As the appeal was not taken within the time prescribed by law, the Circuit Court of Appeals was without jurisdiction. Jud. Code, § 129, 28 U. S. C. 227. The decree of the Circuit Court of Appeals is reversed and the cause is remanded to that court with directions to dismiss the appeal.

*Reversed.*

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### ENELOW v. NEW YORK LIFE INSURANCE CO.

#### CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 47. Argued November 7, 1934.—Decided January 7, 1935.

1. A decree of the District Court under Jud. Code, § 274b, staying an action at law pending determination on the equity side of an equitable defense to the action, is in effect an injunction and, being interlocutory, is appealable to the Circuit Court of Appeals under Jud. Code, § 129. P. 381.
2. An application under Jud. Code, § 274b, to stay (i. e., to enjoin) proceedings of a law action until an equitable defense may be heard, will not lie if the defense is one which is completely available in the law action. The test is whether the defendant could have maintained a bill in equity on the same averments. P. 383.
3. In an action brought by the sole beneficiary of a life insurance policy to collect the insurance after the death of the insured, a defense that the policy was procured by false answers in the application, alleged to have been made by the insured with knowl-